

#### UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

**REGION 1** 1 CONGRESS STREET, SUITE 1100 BOSTON, MASSACHUSETTS 02114-2023

September 5, 2003

Christine Godfrey Chief, Regulatory Division New England Division U.S. Army Corps of Engineers 696 Virginia Road Concord, MA 01742-2751

Fax Transmittal Memo	# of Pages
To: David Worn	From:
Co.:	Co.: -
Dept.:	Phone #
Fax #	Fax #
	DMFX1

Re: Algonquin Gas Transmission Co. and Islander East Pipeline Co. File No. 2001-03091

Dear Ms. Godfrey:

This letter concerns the application of Algonquin Gas Transmission Co. and Islander East Pipeline Co. for a Corps of Engineers permit under Section 10 of the Rivers and Harbors Act of 1899 (RHA) and Section 404 of the Clean Water Act (CWA) to construct a new interstate natural gas compressor station, and to construct and operate approximately 49.9 miles of new 24" natural gas pipeline starting at North Haven, CT and terminating at planned power plants in Brookhaven and Calverton NY, including a 22.6 mile crossing of Long Island Sound.

The pipeline, as proposed, will impact 18 waterbodies, 55 wetlands and Long Island Sound. The onshore segment of the proposed pipeline will cross 27.3 linear miles of lands in Connecticut and New York, and the offshore segment will cross approximately 22.6 linear miles of submerged lands within the Sound. Approximately 22.9 acres of wetlands are proposed to be impacted in association with pipeline right of way construction, and approximately 8 acres of wetlands are proposed to be impacted as the result of permanent pipeline right of way maintenance.

Benthic habitat impacts in Long Island Sound associated with the proposed project include 7.3 acres impacted by anchor strikes, 2,307 acres impacted by anchor cable sweep, 11.5 acres of impacts from dredging, 183 acres impacted from plowing and burial operations, 10.5 acres impacted by the horizontal directional drill (HDD) exit hole, and 0.4 acres impacted for pipeline stabilization, for a total of 2,519.7 acres.

In our letter to the Corps dated July 1, 2002, EPA presented comments on the application for a Corps permit under CWA §404 and RHA §10, after reviewing the Corps' May 31, 2002 Public Notice, the §404 application package, and the Draft Environmental Impact Statement (DEIS) for the project issued by the Federal Energy Regulatory Commission (FERC). EPA submitted separate comments on the DEIS in a letter to FERC dated May 21, 2002, and on the Final EIS in



a letter to FERC dated September 30, 2002. EPA's previous comments on the project as described in the DEIS and FEIS, and with respect to the §404 and the §10 application, are incorporated by reference in this letter.

Since the time that EPA presented the above-referenced comments, the applicant has modified the proposed project in an effort to reduce environmental impacts associated with its preferred alternative. On July 3, 2003, the Corps issued a notice of a public hearing and requested public comment on the project proposal in its current configuration. The purpose of this letter is to update EPA's previous comments to account for the changes in the project proposal (see enclosure).

In summary, we recognize that the applicant has recently proposed construction techniques to minimize project impacts from its preferred alternative, although we would expect such techniques to be employed for all alternatives. However, the applicant still has not demonstrated that the modified preferred alternative represents the least environmentally damaging practicable alternative. Furthermore, the alternatives analysis is incomplete. Despite the lack of a complete analysis and even after considering the reductions in the impacts associated with the modified preferred alternative, it appears that practicable alternatives to the Islander East proposal exist which would result in less adverse impact to the aquatic environment. Therefore we believe that the proposed project has failed to satisfy the §404(b)(1) guidelines and it does not qualify for §404 permit issuance.



I appreciate the opportunity to comment on this project. Of course, EPA reserves the right to provide additional comments as new information becomes available. If you have any questions, please contact Michael Marsh of my staff at (617)918-1556. Thank you very much.

Sincerely,

Lynne A. Hamjian, Manager Connecticut State Program Unit

**Enclosures** 

cc: Greg Mannesto, USFWS Mike Ludwig, NMFS

Susan Jacobson, CTDEP/OLISP

Bob Gilmore, CT DEP

<sup>&</sup>lt;sup>1</sup>We also note that the effect of CTDEP's objection to consistency certification is to prevent the Corps from issuing the §404 and §10 permits unless and until such objection is overturned or withdrawn. Similarly, if CTDEP denies §401 water quality certification, as it as proposed to do, the Corps would be prevented from issuing the federal permits.

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# EPA Comments on the Algonquin Gas Transmission Company Islander East Pipeline Project

### Changes in Construction Techniques

Construction techniques proposed by the applicant to reduce impacts include: the removal and open water disposal of trench sediment, rather the sidecasting and bottom stockpiling; the backfilling of the trench with new material consisting of bank run gravel, rather than previously sidecast native material; the reduction in length and width of trench from the HDD exit hole to approximately milepost 12; and, a reduction from four to three passes of the subsea plow for trenching and pipe installation (beyond milepost 12), resulting in proportionately less benthic impacts due to anchor and cable sweep scarring.

EPA recognizes the applicant's efforts to reduce impacts associated with its preferred alternative. However, the applicant has not demonstrated that the modified preferred alternative represents the least environmentally damaging practicable alternative, or LEDPA, as defined below.

EPA's \$404(b)(1) guidelines (40 CFR 230) set forth the environmental standards which must be satisfied in order for a §404 permit to issue. Two key provisions of the guidelines are critical when considering the proposed project. First, the guidelines generally prohibit the discharge of dredged or fill material if there exists a practicable alternative which causes less harm to the aquatic ecosystem. A discharge of dredged or fill material is prohibited if there "is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem so long as the alternative does not have other significant adverse environmental consequences." [40 CFR 230.10(a)]. This fundamental requirement of the §404 program is often expressed as the regulatory standard that a permit may only be issued for the "least environmentally damaging practicable alternative" or LEDPA. Furthermore, where the project is not water dependent and involves fill in wetlands and other special aquatic sites (as is the case here), practicable and less environmentally damaging alternatives are presumed to exist unless clearly demonstrated otherwise. The burden to demonstrate compliance with the alternatives test and rebut the presumptions rests with the applicant. The second key provision of the §404(b)(1) guidelines prohibits issuance of a permit if the discharge would cause or contribute to significant degradation of waters of the United States [40 CFR 230.10(c)].

#### Alternatives Analysis

In our previous comment letters on the DEIS and the CWA §404 application, we noted that an alternatives analysis must be conducted under CWA §404 (b)(1), to determine the LEDPA. We cautioned that unless a significant amount of additional detailed information were gathered and presented on the project alternatives, this effort would be constrained by the lack of meaningful data on which to base an evaluation of environmental impacts. Unfortunately, the additional information provided to date by the applicant, including the updated alternatives analysis submitted by the applicant in its letter to the Corps dated July 15, 2003, does not present an



analysis of an adequate range of alternatives, the necessary level of detail concerning the environmental resources and potential impacts associated with each of the alternatives considered, or appropriate comparisons of the relative impacts of the various alternatives. Because this analysis is incomplete, the applicant has failed to rebut the regulatory presumption that practicable, less damaging alternatives to the proposed project exist, and thus failed to demonstrate that the proposed project represents the LEDPA and can qualify for a §404 permit.

Despite the lack of a complete alternatives analysis, and even after considering the reductions in the impacts associated with the modified preferred alternative, it appears that practicable alternatives to the Islander East proposal exist which would result in less adverse impact to the aquatic environment. They include an alternative or alternatives modeled on the proposed ELI extension, which, because it involves tapping into an existing offshore pipeline, would avoid the onshore and nearshore impacts associated with the Islander East proposal. The July 15, 2003 alternatives analysis presented by the applicant, while detailing the shortcomings of the ELI alterative from the applicant's perspective, does not demonstrate that the ELI alterative, or a similar alternative, is impracticable<sup>2</sup>.

Islander East maintains that an ELI-type proposal would not meet its project purpose. Even if, for the sake of argument, that were true, there clearly are other alternatives that Islander East can and should be evaluating. For example, letters to the applicant from the Corps (dated May 21, 2003) and CT DEP (dated July 29, 2003) requested that the applicant evaluate alternatives that avoid and minimize environmental impacts by following routes through previously disturbed or less environmentally sensitive areas of the Sound. The applicant has not identified or evaluated these kinds of alternatives. In particular, CT DEP has expressed great concern over the proximity of the proposed pipeline route to the Thimble Islands, which it has identified as an

<sup>&</sup>lt;sup>1</sup>EPA commented on Islander East's original alternatives analysis in our May 21, 2002 letter concerning the DEIS. The updated alternatives analysis presents some additional information on several alternatives, including the Tennessee 300 System alternative, the New York Joint Facilities System (NYJF) alternative, the ELI alternative and a new alternative, the Algonquin C-5 System alternative. The Tennessee 300 and NYJF alternatives were eliminated from consideration due to the greater length of additional pipelines and number of compressor stations needed. We do not believe there is sufficient information to eliminate those alternatives from consideration and recommend that Islander East be required to provide details about additional costs, number of additional compressor stations, and so forth before reaching practicability conclusions. The ELI and C-5 alternatives were evaluated in greater detail. However, environmental impacts of the ELI and C-5 systems were calculated without consideration of impact minimization techniques used for the modified IE proposal, rendering evaluation and comparison of the alternatives and their impacts invalid.

<sup>&</sup>lt;sup>2</sup> A "practicable" alternative is defined as "available and capable of being done after taking into consideration cost, existing technology and logistics in light of the project purpose." [40 CFR 230.10 (a)(2)].

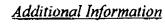
important environmental resource. EPA concurs that the applicant must provide a detailed evaluation of alternatives that follow less environmentally sensitive routes, such as: alignments adjacent to existing gas, electric or telecommunication lines or in other previously disturbed areas; alignments along dredged or maintained channels; alignments which avoid concentrated shellfish habitat, harvesting areas or other important near-coastal resources; alignments through areas of low benthic biodiversity; and, alignments which traverse areas of relatively low water quality.

The alternatives analysis must provide a detailed description of the resources associated with each of the alternatives considered, and the resultant adverse environmental impacts associated with the construction and operation of each alternative. In addition, all alternatives should be evaluated using the same kinds of new construction techniques proposed for the preferred alignment to reduce impacts, so that fair comparisons between alternatives can be made. In the applicant's July 15, 2003 alternatives analysis, the preferred alterative and the ELI and C-5 alternatives were inconsistently compared in terms of environmental impact. The reductions in impact associated with the newly proposed construction techniques (such as reducing the number of barge passes, disposing of trench sediments at a remote location rather than sidecasting, etc.) should be applied to each of a full range of alternatives, including the ELI alternative, to appropriately compare the relative potential impact of each alterative.

## Significance of Impacts

In its letter of July 29, 2003, CTDEP concluded that "the activities as proposed by Islander East in the proposed location would cause significant adverse impacts to coastal resources and water-dependent uses, and would, therefore, be inconsistent with the enforceable policies of the Connecticut CZMP." CTDEP went on to object to Islander East's consistency certification in accordance with 15 CFR §930.63 (b). Furthermore, CTDEP, on August 5, 2003, issued a notice of its tentative determination to deny state water quality certification for the proposed project, pursuant to §401(a)(1) of the CWA.

While these determinations do not of themselves compel a finding under 40 CFR §230.10(c) that the preferred alternative would cause or contribute to significant degradation of waters of the United States, they highlight the substantial impact associated with the preferred alignment and the importance of the resources impacted. As stated above, if the proposed project is determined to cause or contribute to significant degradation of waters of the United States under 40 CFR §230.10(c), no §404 permit can be issued for it. This further emphasizes the acute need for identification and detailed evaluation of alternatives to the preferred alignment, in the event that a permit cannot issue for the preferred alternative due to a determination that it fails the significance test of the 404(b)(1) guidelines.



In your May 21, 2003 letter to Islander East, the Corps included a list of additional information that is needed to complete the evaluation of the project proposal. EPA agrees on the need for the listed additional information, and requests that the applicant submit copies of their responses to EPA for review and comment. Specifically, the following information is requested, in accordance with the itemized list starting on page 5 of the Corps' May 21, 2003 letter:

Pipeline System Alternatives: items 1, 2, 3 Anticipated Future Needs: items 4, 5

Least Environmentally Damaging Practicable Alternative: item 6

Restoration: items 8, 9, 10

Minimization and Contingency Planning: items 11, 12 Wetland Impact and Long-term Monitoring: items 15, 16, 17

In addition, the applicant needs to develop a compensatory mitigation plan, with the goal of offsetting unavoidable impacts to wetlands and waters. While a detailed mitigation plan cannot be fully developed prior to the determination of the LEDPA, the applicant should provide a conceptual plan, generally designed to offset the types of impacts anticipated to occur with the construction and operation of the types alternatives under consideration.